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TO: CONNIE L. PUCHALSKIFAX NUMBER: 312-886-7160COMPANY: U.S. EPA REGION V

TELEPHONE: _____

FROM: EUGENE E. SMARY
WARNER NORCROSS & JUDD LLPDIRECT DIAL: (616) 752-2129

REMARKS:

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TO: KATHLEEN SCHNIEDERSFAX NUMBER: 312-886-0747COMPANY: U.S. EPA

TELEPHONE: _____

FROM: EUGENE E. SMARY
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FAX (616) 782-2500**EUGENE E. SMARY**DIRECT DIAL NUMBER
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July 8, 1998

Ms. Kathleen Schnieders (C14J)
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection
Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Albion-Sheridan Township Landfill—Access Commitment

Dear Ms. Schnieders:

Over the last several weeks, I have mentioned to both Frank Biros and Connie Puchalski (in your absence) that, if there were substantive discussions with Decker Manufacturing relating to terms under which my clients could obtain access to the site through property purchased by Decker, I wanted to participate to make certain that the terms were acceptable to my clients and would allow them to accomplish the tasks required by the UAG. As you know, I was not permitted to be involved with the discussions, and was told that the terms of the "agreement" being negotiated were "standard" EPA terms. I have now received a copy of the access commitment that you telecopied me, signed only by the newly created Decker subsidiary CDC Associates, Inc., and, unfortunately, there are several issues raised by its terms.

The note you sent me with a copy of the access commitment suggests that you consider this document to provide my clients with access. However, I believe that the NCP would specifically preclude my clients from utilizing this commitment as the basis for legal access to the property. I gather that the intent was to declare my clients to be "authorized representatives of EPA." Yet, 40 CFR 300.400(d)(3) appears to make it quite clear that EPA may obtain access for PRPs as its "authorized representatives" only if the PRPs are acting pursuant to an administrative consent order or a consent decree. In the present situation, my clients are operating under a unilateral administrative order issued by the Agency pursuant to Section 106 of CERCLA. In light of the NCP provision, I would appreciate receiving the Agency's explanation for why it thinks the access agreement is applicable to my clients' situation.

In addition, the access commitment requires the property to be fenced-in prior to permitting access. We will need to know when Decker has installed the required fencing so as to trigger the other provisions of the access commitment, assuming that the above NCP provision does not preclude us from relying on this document or that the Agency issues Decker an order to provide my clients with access. While the commitment does not specifically state that the

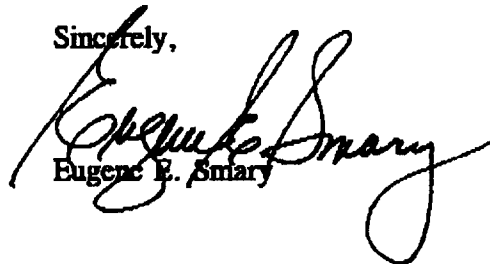
Ms. Kathleen Schnieders
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owner will provide the fencing, the requirement of a fence, if imposed upon my clients, could operate only as a modification of the approved remedial design, required by the UAO, neither of which has occurred as far as I know.

I am disappointed that I must send this message to you. I had hoped, based on our telephone discussions prior to your vacation, that access would be a rather simple matter of the Agency simply issuing an order to Decker and its newly created subsidiary requiring them to provide my clients with unconditional, unrestricted access to the site so that work could begin. This did not happen; and I am now reluctantly required to inform you that the access commitment appears to require further clarification before it can operate as intended.

I look forward to your response to this letter.

Sincerely,


Eugene E. Smary

lap

cc: Frank Biros, Esq.
Connie Puchalski, Esq.
Cooper Industries
Corning, Inc.

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